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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal No. 1419/2005

Appellant Plaintiff : Smt. Asha Mahadik, aged about 55 years, Widow of Late Shri Raghunath Rao Mahadik, R/o Behind Old R.T.O. , Mungeli Naka, Bilaspur (C.G.)

Versus

Respondents Defendants :

1. Smt. Sushma Mahadik, Widow of Late Shri Ashok Mahadik, aged about 41 years.
2. Diva Mahadik, S/o Late Shri Ashok Mahadik, aged about 18 years.
3. Ku. Rajni Mahadik, D/o Late Shri Ashok Mahadik, aged about 18 years.

   Respondents 1 to 3 all are residents of House No. N.D. – 309, First Floor, Shailendra Nagar, Raipur (C.G.)
4. Neeraj Kemelia Private Ltd., Through: Director Shyam Sunder Sharma, S/o Shri Brijmohan Sharma, aged about 32 years, R/o 11/146, Malviya Road, Raipur (C.G.)
5. Arun Mahadik, S/o Late Shri Bhubneshwar Rao Mahadik, aged about 46 years, R/o Kanker Bada, Bhudapara, Raipur (C.G.)
6. Anil Mahadik, S/o Late Shri Bhubneshwar Rao Mahadik, aged about 37 years, R/o Amlidih, Raipur (C.G.)
7. Smt. Nisha Engley, aged about 53 years, W/o Rajendra Engley, R/o Quar. No. 49-A, B.M.Y. Zone – Chaurada, District – Durg (C.G.)
8. Smt. Usha Engley, aged about 48 years, W/o Vinod Engley, R/o Quar. No. A-160, M.P.H.B. Colony, Kota Raipur, District Raipur (C.G.)

9 Smt. Lata Shinde, aged about 44 years, W/o Ram Shinde, R/o Shinde Medical Stores, Mahakaleshwar Road, Ujjain (M.P).

10 Smt. Bela Vaghe, aged about 40 years, W/o Madhukar Vaghe, R/o Jai Hind Cinema Stop, Nirmal Park, Railway Officers Colony, Maikihala, Mumbai (Maharashtra)

11 Smt. Hema Lokhande, aged about 33 years, W/o Vinod Lokhande, R/o Kusumanjali Sadan, Naik Road Mahal, Nagpur (C.G.)

Miscellaneous Appeal Under Order 43 Rule 1 C.P.C.

Present:-
Shri Gautam Bhaduri, counsel with Shri Santosh Tiwari, counsel for the appellant.
Shri Malay Kumar Bhaduri, counsel for respondents No. 1, 2, 3 and 6.
Shri B.P. Sharma, counsel for respondents No. 4.
None appears for remaining respondents though they are served.

ORAL ORDER
(Passed on 18-06-2007)

Heard on admission.

2. The appellant is aggrieved by the order dated 28.10.2005 passed by the District Judge, Raipur in Civil Suit No. 97-A/2005 whereby the application under Order 39 Rule 1 and 2 read with Section 151 of C.P.C. filed by the appellant/plaintiff was dismissed.

3. Learned counsel for the appellant did not dispute that the plaintiff was not in possession of the suit property. He also did not dispute that no relief for partition of suit property was claimed in suit. It was also not disputed that Baldev Rao was the owner of the property and on his death his son Late Bhubneshwar Rao had succeeded to the property

4. On the basis of the material adduced before it by the parties, the Trial Court has come to the conclusion that the ingredients necessary for claiming temporary injunction have not been made out by the appellant/plaintiff. It has observed in para 12 of the impugned order that the appellant/plaintiff is not in possession of the suit land.

It has also recorded a finding in para 14 that prima facie the suit land belonged to Ashok Mahadik, the deceased husband of the defendant No. 1 and the late father of the defendants No. 2 and 3. It also recorded a finding that Bhubneshwar Rao, the owner of the suit property had a right to bequeath the suit property on 9.9.84 in favour of Ashok Mahadik.

5. On considering the entire material on record, it cannot be said that the Court below has committed any error in rejecting the application filed by the plaintiff for grant of temporary injunction.

6. There is thus no substance in this appeal, which is accordingly dismissed.

7 Learned District Judge is directed to expeditiously dispose of the suit preferably within a period of six months from today.

8. In view of above order, M.(C).P. Nos. 1726/2005 and 1727/2005 stand disposed of.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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